IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1192 of 1999
with
CIVIL APPLICATION Nos. 2484 of 1999 and
11024 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT METHODIST CHURCH CARDIOTHORACIC AND VASCULAR
Versus
UNION OF INDIA

Appearance:
1. Special Civil Application No. 1192 of 1999
MR MIHIR H JOSHI, Advocate for the Petitioner
MR MUKESH R SHAH, Standing Counsel
for Respondent No. 1, 2 & 3

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 16/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

#. The petitioner which is a Public Charitable Trust, registered under the provisions of the Bombay Public Trust Act and a Society registered under the Societies Registration Act, imported Cardiac Catheterisation Laboratory from Seimens, Germany for its use for coronary angiography and angioplasty as well as its use to diagnose heart defects etc., challenges the directions/order dated 25.1.99, by which the Director General of Health Services rejected the application of the petitioner for issuance of installation certificate in respect of the said equipment and withdrew the Customs Duty Exemption Certificate which was issued by the Director on 18.3.94, in respect of the same.

#. The petitioner had imported the said equipment and cleared it without payment of duty on the strength of the exemption certificate which was issued on 18.3.94, as per Annexure:A to the petition under the notification dated 1.3.88 at Annexure:B to the petition. According to the petitioner, there was delay in setting up the equipment on account of non-receipt of structural plans necessary for installation, and also in setting up of peripheral facilities. There was delay even on the part of the supplier in carrying out installation and the equipment became operational finally on 28.3.96.

2.1 Out-patient Department of the hospital started functioning on limited basis in January, 1995 and thereafter, the hospital started functioning on a full-fledged basis from January, 1997. Object of the hospital, according to the petitioner, was to give treatment to all patients irrespective of their cast, creed or economic status. It is the petitioner's case that it does not at all commercially exploit the equipment, and runs it on a huge budgetary deficit which is met by the donations. According to the petitioner, though the Duty Exemption Certificate, dated 18.3.94 was granted on the basis that the hospital fell under Item-4 of the Table incorporated in the notification, the hospital, when it started functioning was relatable to a hospital specified in para-1 of the Table in view of Clause-(iv) of the Item-4 under which the respondent no.2 had categorized the petitioner in the Duty Exemption Certificate. This is why the petitioner wrote a letter, dated 6.2.98, as per Annexure:C to the petition, stating that the hospital would also fall in para-1 of that Table.

2.2 Since the installation certificate was not produced as per the undertaking given by the petitioner at the time of getting the equipment cleared without payment of customs duty on the strength of the Exemption Certificate, the respondent no. 3-Commissioner of Customs (Import), issued a Show Cause Notice-cum-Demand Notice, requiring the petitioner to show cause why the customs duty of Rs. 66,26,949/should not be demanded and confirmed under Section 28(1) of the Customs Act, 1962, and the equipment in question not be confiscated under Section 111(o) of the Customs Act, on the ground that the Installation and Hospital Running Certificate had not been submitted by the petitioner, and that it was not providing free treatment on an average to atleast 40% of the outdoor patients. The petitioner contested the notice by reply dated 22.3.98, a copy of which is at Annexure:E to the petition.

2.3 In the above background, the petitioner made an application on 5.3.'98 to the respondent no.2-Director of Health Services for issuance of the installation certificate, as postulated in the notification. However, the said application came to be rejected on 25.1.'99 by the respondent no. 2, who, simultaneously, also withdrew the Customs Duty Exemption Certificate which was issued on 18.3.94.

2.4 According to the petitioner, from the total number of patients treated in the out-patient Department by the hospital, 45% of the total patients were treated free which was more than the required percentage of 40%. The petitioner was a Public Charitable Trust and had complied with the terms of the notification, and withdrawal of the certificate without giving any opportunity of being heard to the petitioner was in violation of the principles of natural justice and void. It was further contended that the respondent no. 2 was bound to grant installation certificate, because, the equipment was already installed and the hospital had started functioning. Moreover, the State of Gujarat had, after due verification, recommended the grant of such certificate. By virtue of the interim relief that has been operative, the impugned order dated 25th January, 1999 has been stayed.

#. In the affidavit-in-reply filed by the Regional Director on behalf of the respondents, it was contended that the case of the petitioner was scrutinised on the basis of the information furnished by the petitioner, and it was found that the petitioner did not fulfill the

conditions enumerated in the notification. It was further contended that the petitioner was issued Customs Duty Exemption Certificate for Category-4 hospital, and, therefore, as per the provisions of the notification dated 1.3.'88, it was required to fulfill the conditions pertaining to Category-2 hospital, which entailed giving of free treatment, on an average, to atleast 40% of all outdoor patients and free treatment to all indoor patients belonging to families having income of less than Rs. 500/- per month. According to the respondents, it was found by the respondent no. 2 that the petitioner did not fulfill the conditions of giving free treatment to atleast 40% O.P.D. patients and free treatment to all indoor patients belonging to the families having income of less than Rs. 500/- per month. Therefore, the petitioner, was not entitled to continue the benefit of Customs Duty Exemption Certificate.

#. It was contended by the learned counsel appearing for the petitioner that no hearing was given before issuance of the impugned order which adversely affected the petitioner's rights under the exemption certificate. It was submitted that the impugned order was made by the petitioner for obtaining installation certificate, and since admittedly, the equipment was already installed and hospital had started running, the respondent-authority was bound to issue installation certificate. Instead of issuing such certificate, the authority, while rejecting the application, withdrew the exemption certificate which was not even the subject matter of that application. It was submitted that the placement of the petitioner-hospital in Category-4 did not preclude it from the benefit of Category-1 hospital, because, Category-4 contemplated the types of hospitals which fell in any of the categories enumerated at sr. nos. 1, 2 and 3 of the Table contained in the notification. It was submitted that since the petitioner was run by a Public Charitable Trust which was duly registered, the case squarely fell within the ambit of Item-1 of the Table contained in the notification read with Category-4 thereof.

#. The learned Senior Standing Counsel appearing for the respondents, on the other hand contended that, since the petitioner did not fulfill the conditions on the basis of which the exemption was granted under the notification at Annexure:B to the petition, there was no point in issuing installation certificate which depended upon the fulfillment of requirements of the notification. According to the learned counsel, on scrutiny of the material which was adduced by the petitioner, it became

clear that the petitioner had treated only 12.60% of O.P.D. patients free in the year 1996-97. Even in 1995-96, it had treated only 34.31% O.P.D. patients free as against the requirement of 40%. It was argued that such hospitals were obliged to provide free treatment to all indoor patients whose family income was less than Rs. 500/- per month for the mandatory requirement, and, therefore, non-compliance in the said two conditions of providing free treatment as per the said stipulations disentitled the petitioner to any exemption certificate or installation certificate. It was submitted that since the impugned order was made after scrutinising the material which was produced by the petitioner, there was no need to give any separate hearing and consideration of the material was itself, an adequate hearing given to the petitioner in the circumstances of the case.

#. Section 25 of the Customs Act, 1962 empowers the Central Government by notification in official gazette to exempt generally, either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, goods of any specified description from the whole or any part of the customs duty leviable thereon. In exercise of the said powers, the Central Government being satisfied that it was necessary in public interest so to do, by a notification dated 1st March, 1988, a copy of which is at Annexure:B to the petition, exempted all equipments, apparatus and appliances including spare parts and accessories thereof, but excluding consumable items, import of which was approved either generally or in each case by the Government of India in the Ministry of Health & Family Welfare, or by the Director General of Health Services to the Government of India, as essential for use in any hospital specified in the Table contained in the said notification from whole of the duty of customs leviable as well as whole of the additional duty under the First Schedule to the Customs Tariff Act, 1975 and Section 3 of the Customs Tariff Act, respectively.

6.1 At Item-1 of the Table are included hospitals as may be certified by the Ministry of Health & Welfare to be run or substantially aided by such charitable organisations as may be approved, from time to time, by the said Ministry. Item-2 of the Table refers to hospitals which may be certified by the said Ministry, in each case to be run for providing medical, surgical or diagnostic treatment not only without any distinction of cast, creed, race, religion etc., but also treatment "(a) free on an average, to atleast 40% of all their outdoor patients and (b) free to all indoor patients belonging to

families with income of less than Rs. 500/- per month and keeping for this purpose atleast 10% of all the hospital beds reserved for such patients, and (c) at reasonable charges either on the basis of the income of the patients concerned or otherwise, to patients other than those specified in Clauses (a) and (b). At Item-3 of the Table are mentioned the hospitals in respect of which the said Ministry may, having regard to the type of medical, surgical or diagnostic treatment available there or geographical situation thereof, or the class of patients for whom the medical, surgical or diagnostic treatment is being provided, certify either generally or in each case that the hospital even though it makes a charge for the said treatment is nevertheless run on non-profit basis and is deserving of exemption from the payment of duty on the said hospital equipment under the said notification.

6.2 Item-4 of the Table in the exemption notification relates to such hospital which is in the process of being established and in respect of which the Ministry is of the opinion that there is appropriate programme for its establishment, that there are sufficient funds and other resources required for such establishment, that the hospital would be in a position to start functioning within two years and that the hospital when starts functioning would be relatable to a hospital specified in paragraphs 1, 2 or 3 of this Table. One requirement under the notification as regards hospital falling in Item-4 was that the importer shall give an undertaking in writing to the Assistant Collector at the time of clearance of the hospital equipment that the importer shall furnish a certificate from the Ministry or from the Directorate within such period as the Assistant Collector of Customs may specify or within the extended period, to the effect that such hospital equipment has been installed in the hospital and that such hospital has started functioning. The certificate was required to be furnished at appropriate time as stated in the proviso. A bond was required to be executed by the importer for the same as may be specified by the Assistant Collector of Customs that on demand, an amount equal to duty leviable on the equipment will be paid if the equipment is not installed or the hospital does not start functioning within the specified period.

#. It is clear on a plain reading of the aforesaid notification that mere mention of Category-4 in the exemption certificate did not preclude consideration of the question whether the hospital in the process of establishment to which Category-4 applied would when it

starts functioning become a hospital of the type falling in Category-1, 2 or 3 of the Table. In other words, it was open for the petitioner to show that when the hospital which was in the process of being established would when it starts functioning become a hospital run or substantially aided by a charitable organisation. The notification shows that if the hospitals fall in Category-1 of hospitals named in the Table, the conditions which were attached to the hospitals falling in Category-2 were not attracted. In other words, if it was specified by the agency that hospital was run or substantially aided by a charitable organisation as may be approved from time to time by the Ministry, then to such hospital, the requirement of free treatment envisaged in Clauses (a) and (b) of the Table did not apply, because, no condition is attached to the hospitals which are mentioned in Category-1 of the Table. A hospital falling in Category-4 was required to satisfy the conditions mentioned therein which included the condition to the effect that when it starts functioning it would be relatable to meaning thereby that it will be of the nature or a hospital specified in paragraphs 1, 2 or 3 of the Table. In other words, if the hospital which is in the process of being established was not to be relatable to category of a hospital specified in paragraphs 1, 2 or 3 of the Table, it would not get the benefit of exemption. Such a condition which was peculiar to hospital which is in the process of being established falling in Category-4 did not have the effect of adding the conditions meant for the hospitals covered in Categories 1, 2 or 3 automatically applicable to it. Each category had its own conditions and conditions applicable to one did not apply to the other. Therefore also, the conditions of Category-2 could not be read in Category-4 for which the exemption certificate was granted to the petitioner. A hospital to which Category-4 relates was yet in the process of being established, and for getting the benefit of exemption, it should become a hospital of the type of hospital that fall in Categories 1, 2 or 3, when it starts functioning. The idea underlying Category-4 appears to be to encourage bringing into existence of new hospitals of the nature falling in Categories 1, 2 or 3.

#. It appears from the record that the respondent no. 2 has made the impugned order without affording any opportunity of being heard to the petitioner. The exemption certificate which was issued under the said notification on 18.3.'94 in favour of the petitioner created valuable rights and before withdrawing the exemption benefit, it was incumbent upon the respondent

no. 2 to give an opportunity to the petitioner against the proposed action, which admittedly was not given. In fact, from the impugned order, it appears that the respondent no.2 had proceeded on the footing that the hospital of the petitioner falls in Category-2 of hospitals mentioned in the Table to which the conditions incorporated in the Clauses (1), (b) and (c) were applicable and which did not apply to a hospital falling under Category-1 or even to a hospital which was in the process of establishment which when it starts functioning would fall in Category-1. If such opportunity was given, the petitioner could have pleaded before the concerned authority its case that it was a hospital falling in Category-1 and that even the hospital which was in the process of establishment and which fell under Category-4 was, when it starts functioning, to be run in the manner contemplated in Category-1, and was a hospital of such nature and that the conditions of free treatment did not apply to these categories.

#. We are not going into the factual question as to whether the petitioner's hospital actually fell in one category or the other, but we are only pointing out that the respondent-authority has, without considering the significance of the categorisation of hospitals and the effect of Clause (iv) of Category-4 read with Category-1, straightway proceeded to consider the matter in light of the conditions which were attached to the hospitals falling in Category-2. The impugned order is, in our opinion, passed without proper application of mind to the contents of the exemption notification and has been made without giving any opportunity of being heard to the petitioner against the denial of the installation certificate which had a nexus only with the installation of the equipment and the running of the hospital, and against withdrawal of the Duty Exemption Certificate, rendering it illegal and void.

##. The impugned order is, therefore, hereby set aside with a direction to the respondent no. 2 to reconsider the application of the petitioner for issuance of installation certificate and take appropriate decision thereon in accordance with law expeditiously, preferably within two months from the date of the receipt of the writ of this order. Rule is made absolute accordingly with no order as to costs. In view of the order made in the petition, the Civil Applications do not survive and stand disposed of with no order as to costs.

[R.K. ABICHANDANI, J.]

[KUNDAN SINGH, J.]

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